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EXAMINER

GRAY, LINDA LAMEY

ART UNIT

PAPER NUMBER

1734

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/992,861

Applicant(s)

KELDERS ET AL.

Examiner

Linda L Gray

Art Unit

1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11-14-01, 2-7-02, and 11-4-02.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

**Claim Rejections - 35 USC § 112**

- 1.** The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- 2. Claim 10 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for one depression on each sidewall of the cover at area 86, does not reasonably provide enablement for at least two depressions on each sidewall of the cover.**

The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to have the invention commensurate in scope with these claims.

- 3.** The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 4. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.**

**Claim 1**, "the tape" (L 12-13) lacks antecedent basis. Also, see **claim 12**, line 16.

**Claim 4**, "the discharge end of the cover piece" lacks antecedent basis. Also, see **claim 6**.

**Claim 5**, "the discharge end of the roll-holding piece" lacks antecedent basis.

**Claim 17**, it is unclear which discharge end is being referenced.

**Claim Rejections - 35 USC § 102**

- 5.** The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless – (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**6. Claims 1-6, 9-10, 12-14 and 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Taylor (US 2,584,065).**

**Claims 1 and 12**, Taylor teaches an apparatus for dispensing roll 7 of material 8 including an enclosable housing having a dispensing end, as shown in Figure 5, and a hinge end, as shown in Figure 6. The apparatus includes roll-holding piece 1 for holding roll 7 of material 8 having a discharge end, cover piece 2 having a discharge end, hinge assembly 3 for joining pieces 1 and piece 2 at the hinge end where assembly 3 permits opening of the housing while piece 2 and piece 1 remain connected by assembly 3, applicator 24 located proximate the dispensing end for applying material 8 to a substrate, a discharge opening for material 8 located proximate to the dispensing end, and cutter member 23 located proximate the dispensing end for cutting material 8 (c 2, L 5, to c 4, L 7).

With respect to the limitation of the material being a tape, this limitation does not provide a structural limitation to the apparatus claimed. Taylor teaches material 8 to be tape, however.

**Claims 2 and 12**, pieces 1 and 2 each have a bottom, two opposing sidewalls, and a discharge end. **Claims 3 and 12**, the apparatus includes a latching assembly having opposing latching shoulders 25 extending from the bottom of piece 1 for securing piece 1 to piece 2. **Claims 4 and 12**, applicator 24 is located on piece 2 proximate a discharge end of piece 2, and applicator 24 is stationary on piece 2. **Claims 5 and 12**, the discharge opening is located between applicator 24 and a discharge end of piece 1. **Claims 6 and 12**, member 23 is located on piece 2 proximate the discharge end of piece 2. **Claims 9 and 14**, Figure 2 demonstrates a depression where one may place a finger or thumb on piece 2, i.e., the area between both ends of piece 2. **Claim 10**, in Figure 3 demonstrates that the sidewalls of cover 2 are depressed on both sides for placement of one's finger and/or thumb. **Claim 13**, Figures 1 and 6 demonstrate that the exterior surface of piece 1 has one or more ridges along a bottom area. Should material 8 come in contact with the ridges, adherence would be prevented with the area where the ridges are present. Surface roughening is a well-known alternative to ridges though such is not necessarily required by the pending claims. **Claim 14**, Figure 3 demonstrates that the sidewalls of cover 2 are depressed on both sides for placement of one's finger and/or thumb.

**Claim 16**, Taylor teaches a method for dispensing roll 7 of material 8 including providing an apparatus for dispensing roll 7 of material 8 wherein the apparatus includes an enclosable housing having an end, as shown in Figure 5, and a hinge end, as shown in Figure 6. The apparatus also includes roll-holding piece 1 for holding roll 7 of material 8 having a discharge end, cover piece 2 having a discharge end, hinge assembly 3 for joining pieces 1 and piece 2 at the hinge end where assembly 3 permits opening of the housing while piece 2 and piece 1 remain connected by assembly 3, applicator 24 located proximate the dispensing end for applying material 8 to a substrate, a discharge opening for material 8 located proximate to the dispensing end, and cutter member 23 located proximate the dispensing end for cutting material 8. The method includes mounting roll 7 of material 8 in piece 1 of the housing and applying material 8 to a substrate by pressing material 8 onto a substrate using applicator 24.

**Claim 17**, the mounting of roll 7 of material 8 is carried out in a manner so that material 8 extends through the discharge opening and at least partially against applicator 24 when the housing is closed. **Claim 18**, the method includes cutting material 8 with member 23 to separate roll 7 of material 8 from the material 8 applied to the substrate. **Claim 19**, material 8 is pressure sensitive adhesive tape. **Claim 20**, the dispenser is held in the hand during the applying of material 8 to the substrate.

**7. Claims 1-3 and 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Pearson (US 3,850,779).**

**Claim 1**, Pearson teaches an apparatus for dispensing roll 15 of material 14 including an enclosable housing having a dispensing end, as shown in Figure 2, and a hinge end, as shown in Figure 1. The apparatus includes roll-holding piece 11 for holding roll 15 of material 14 having a discharge end, cover piece 22 having a discharge end, a hinge assembly shown in Figure 1 for joining pieces 11 and piece 22 at the hinge end where the hinge assembly permits opening of the housing while piece 12 and piece 11 remain connected by the hinge assembly, applicator 26 located proximate the dispensing end for applying material 14 to substrate 25, a

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discharge opening for material 14 located proximate to the dispensing end, and cutter member 35 located proximate the dispensing end for cutting material 14 (c 2, L 21, to c 4, L 1).

With respect to the limitation of the material being a tape, this limitation does not provide a structural limitation to the apparatus claimed. Pearson teaches material 14 to be tape, however.

**Claims 2 and 12**, pieces 11 and 22 each have a bottom, two opposing sidewalls, and a discharge end. **Claims 3 and 12**, the apparatus includes a latching assembly having opposing latching shoulders 19 extending from the bottom of piece 1 for securing piece 11 to piece 22.

**Claim 16**, Pearson teaches a method for dispensing roll 15 of material 14 including providing an apparatus for dispensing roll 15 of material 14 wherein the apparatus includes an enclosable housing having an end, as shown in Figure 2, and a hinge end, as shown in Figure 1. The apparatus also includes roll-holding piece 21 for holding roll 15 of material 14 having a discharge end, cover piece 22 having a discharge end, a hinge assembly shown in Figure 1 for joining pieces 11 and piece 22 at the hinge end where the hinge assembly permits opening of the housing while piece 12 and piece 11 remain connected by the hinge assembly, applicator 26 located proximate the dispensing end for applying material 14 to substrate 25, a discharge opening for material 14 located proximate to the dispensing end, and cutter member 35 located proximate the dispensing end for cutting material 14. The method includes mounting roll 15 of material 14 in piece 22 of the housing and applying material 14 to substrate 25 by pressing material 14 onto substrate 25 using applicator 26.

**Claim 17**, the mounting of roll 15 of material 14 is carried out in a manner so that material 14 extends through the discharge opening and at least partially against applicator 26 when the housing is closed. **Claim 18**, the method includes cutting material 14 with member 35 to separate roll 15 of material 14 from the material 14 applied to substrate 25. **Claim 19**, material 14 is pressure sensitive adhesive tape. **Claim 20**, the dispenser is held in the hand during the applying of material 14 to substrate 25.

**Claim Rejections - 35 USC § 103**

**8.** The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**9. Claims 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor in view of Link (US 3,895,059).**

*Claims 11 and 15, Taylor does not teach the bottom of piece 1 to have one or more feet for resting the apparatus on a surface.*

Link teaches a hand-portable tape dispenser having legs on the bottom, see Figures 9-

**11.**

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Taylor that piece 1 have one or more feet because Link indicates in the same art the presence of feet on the bottom of a tape dispenser where such in Taylor would allow on to stand the apparatus steadily upon a surface in a position ready for gripping for immediate use of the apparatus.

**10. Claim 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor.**

*Claim 7, Taylor does not teach the interior surface of the bottom of piece 1 have one or more ridges to prevent material 8 from adhering thereto.*

It is conventional to provide ridges along the surfaces where a roll of tape is passing thereby to keep the adhesive on the tape from adhering thereto should contact occur, and it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in that the interior surface of the bottom of piece 1 have one or more ridges to prevent material 8 from adhering thereto which would interfere with the application process.

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Surface roughening is a well-known alternative to ridges though such is not necessarily required by the pending claim.

**Claim 8**, Figures 1 and 6 of Taylor demonstrate that the exterior surface of piece 1 has one or more ridges along a bottom area. Should material 8 come in contact with the ridges, adherence would be prevented with the area where the ridges are present.

**11. Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearson.**

*Claims 7-8, Pearson does not teach the interior surface or exterior of the bottom of piece 11 have one or more ridges to prevent material 14 from adhering thereto.*

It is conventional to provide ridges along the surfaces where a roll of tape is passing thereby to keep the adhesive on the tape from adhering thereto should contact occur, and it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Pearson that the interior surface or exterior of the bottom of piece 11 have one or more ridges to prevent material 14 from adhering thereto which would interfere with the application process.

Surface roughening is a well-known alternative to ridges though such is not necessarily required by the pending claim.

*Claims 9-10, Pearson does not teach at least one depression for placement of a finger on piece 22 and does not teach for claim 10 a side depression in each sidewall of piece 22 for placement of a finger or thumb.*

It is conventional to provide such depressions on hand-held tape dispensers for easy grabbing of the dispenser and for maintaining a good grip of the dispenser, and it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Pearson at least one depression for placement of a finger on piece 22 and a side depression in each sidewall of piece 22 for placement of a finger or thumb such that one can easily grab hold of the dispenser and maintain a good grip.

Surface roughening is a well-known alternative to ridges though such is not necessarily required by the pending claim.

**12. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pearson in view of Link.**

*Claim 11, Pearson does not teach the bottom of piece 11 to have one or more feet for resting the apparatus on a surface.*



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In view of Link it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Pearson that piece 11 have one or more feet because Link indicates in the same art the presence of feet on the bottom of a tape dispenser where such in Taylor would allow on to stand the apparatus steadily upon a surface in a position ready for gripping for immediate use of the apparatus.

**Conclusion**

**13.** Any inquiry concerning this or earlier communications should be directed Linda L. Gray at 703-308-1093, 6:30am-4:00pm, M-F. The examiner's supervisor, Richard Crispino, can be reached on 703-308-3853. Any general inquiries should be directed to the receptionist at 703-308-0661. The fax numbers are 703-305-7718 (before final) and 703-872-9311 (after final).

llg  
February 4, 2003

*Linda L. Gray*  
LINDA GRAY  
PRIMARY EXAMINER